

REMARKS

Claims 1 through 18 are currently pending in the application. In response to the Restriction Requirement issued on September 13, 2006, the Applicant has provisionally elected the claims of Group I (Claims 1 to 14) with traverse. Applicant has withdrawn Claims 15 to 18 as non-elected. The Applicant has further provisionally elected with traverse the species of viscosity in Claim 2. The Applicant has amended Claim 2 to remove references to the non-elected species. Applicant further indicates that Claims 13 and 14 read on the elected species.

Applicant Traverses the Instant Restriction Requirement

The Examiner has subjected the claims in the application to a Restriction Requirement on the basis that the process recited in Claims 1 through 14 can be practiced by hand. Applicant respectfully traverses the Restriction Requirement.

Claim 1 recites the first step of determining at least one physical quantity of a sample, wherein the physical quantity characterizes an interaction of the sample with sound waves, and a second step of correlating the at least one physical quantity with reference data, which characterize at least one condition of said sample.

Claim 15 recites a diagnostic device for investigating a sample of a biological organism. The diagnostic device comprises a measuring device for determining at least one physical quantity of a sample, wherein the at least one physical quantity characterizes an interaction of the sample with sound waves.

The Examiner asserts that the first and second step of Claim 1 can be accomplished by visual inspection. Applicant respectfully submits that this assertion is incorrect.

The instant specification at paragraph [0013] and the attached figures make it quite clear that the determination step of Claim 1 involves the measurement of numerical quantities

associated with the interaction of a sample with sound waves. In the preferred embodiment, the physical quantity is measured with a relative precision of 10^{-3} . Applicant respectfully submits that a numerical quantity associated with the interaction of a sample with sound waves cannot be determined merely by visual inspection, let alone with a relative precision of 10^{-3} . Rather, such a determination requires a measuring device for determining at least one physical quantity of a sample, wherein the at least one physical quantity characterizes an interaction of the sample with sound waves as recited in Claim 15.

Applicant therefore respectfully submits that the Restriction of the present claims is improper, and requests that the Restriction Requirement be withdrawn.

Applicant Traverses the Instant Requirement to Elect a Species

The Examiner has subjected Claim 2 to a requirement to elect a species on the basis that the species are unrelated, i.e. have a different design and mode of operation. Applicant respectfully traverses the requirement to elect a species.

It is asserted that the determination of viscosity and compressibility require different techniques. Applicant respectfully submits that this observation by the Examiner ignores the teachings of the specification and the recitation in independent Claim 1. Specifically, the various species are capable of use together, as disclosed in paragraph [0015], which states that at least two and preferably a series of physical quantities are measured. Further, since Claim 2 depends from Claim 1, the recited properties are determined as characterizing the interaction of a sample with sound waves. Finally, MPEP § 806.05(j) states that the Examiner must show that the species do not overlap in scope, **i.e. are mutually exclusive**. The recitation are paragraph [0015] shows that the species recited in Claim 2 are not mutually exclusive.

Applicant therefore respectfully submits that the requirement to elect a species is improper, and requests that the requirement be withdrawn.

CONCLUSION

Applicant believes that the above remarks have refuted the grounds for imposing the instant restrictions on the claims. Applicant therefore respectfully requests withdrawal of the restrictions and allowance of the claims.

AUTHORIZATION

Applicant believes that no extension of time is required to make submission of this response timely. However, in the event that an extension of time is required, Applicant hereby submits a petition for such extension of time as may be necessary to make this response timely. The Commissioner is hereby authorized to charge the necessary fees to deposit account No. 50-0573. A duplicate of this authorization is enclosed.

Respectfully Submitted,

DRINKER, BIDDLE & REATH LLP



Matthew P. McWilliams
Registration Number: 46922

Drinker, Biddle & Reath
One Logan Square
18th and Cherry Streets
Philadelphia, PA 19103
Ph: (215) 988-3381
Fax: (215) 988-2757
Date: December 4, 2006

Customer No. 023973